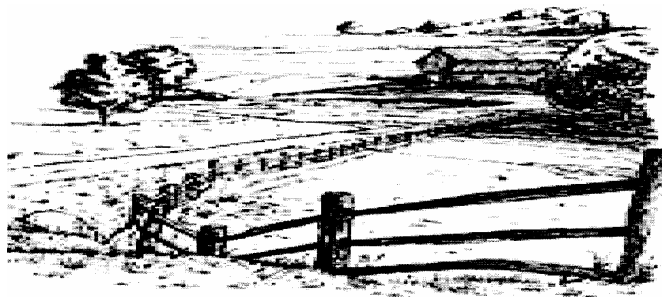


Virginia Agricultural Stewardship Act Guidelines

A Positive Approach

(Revision Effective June 7, 2004)

Virginia Department of Agriculture
And Consumer Services



... Working in Cooperation
with Virginia's Soil and Water
Conservation Districts

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GUIDELINES
AGRICULTURAL STEWARDSHIP ACT
Revised [Effective Date]

NATURE OF GUIDELINES

The Agricultural Stewardship Act¹ ("ASA or Act") requires that the Commissioner of Agriculture and Consumer Services ("Commissioner") develop guidelines to assist in the implementation of the ASA. These guidelines are not regulations and no one is required to abide by them. In fact, there are no regulations concerning the ASA. The only document that anyone must abide by is the ASA itself.

These guidelines set out procedures for implementing the ASA. As they are not regulations, they do not have the force of law. Matters addressed in these guidelines that are not required by statute may be waived or changed at the discretion of the Commissioner. In the event of any conflict between the guidelines and the ASA, the ASA will prevail. The Commissioner expects that these guidelines will be reviewed periodically to determine whether changes are needed.

The Commissioner welcomes your questions and requests for information about the ASA Program. All correspondence regarding the ASA guidelines can be directed to the address listed below or you can contact the ASA Program at 804/786-3538.

Commissioner
Agricultural Stewardship Program
Virginia Department of Agriculture and Consumer Services
P.O. Box 1163
Richmond, Virginia 23218

BACKGROUND ON THE
AGRICULTURAL STEWARDSHIP ACT

In response to increased public concerns for a clean environment, Virginia's agricultural leadership sought a way of dealing with agricultural water pollution that was different from the approaches used with other industries, such as manufacturers. Most manufacturing plants must obtain permits and follow strict rules of operation. The agricultural community wanted a different approach that did not rely on permits and strict operating rules, but took into account the wide variety of farming practices used in Virginia.

The ASA offers a positive approach to addressing pollution involving agricultural operations.

¹ Article 3.1 (Section 10.1-559.1 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.

It provides procedures by which individual agricultural producers can be alerted to areas of their operations that may be causing water pollution. Rather than developing regulations with strict rules governing every type of farming practice, the ASA looks at each farm individually.

BRIEF SUMMARY AGRICULTURAL STEWARDSHIP ACT (ASA)

The procedures created by the ASA begin with a complaint made to the Commissioner of the Virginia Department of Agriculture and Consumer Services. The Commissioner must accept complaints alleging that a specific agricultural activity is causing or will cause water pollution. However, not all complaints have to be investigated as will be discussed below. After the Commissioner receives a complaint and the complaint is one that must be investigated, he will ask the local soil and water conservation district ("District" or "local district") whether it wishes to investigate the complaint. If the District does not wish to investigate the complaint, the Commissioner may conduct his own investigation. (A copy of the ASA is in Appendix A.)

The purpose of the investigation is to determine whether the agricultural activity (that was the subject of the complaint) is causing or will cause water pollution. If not, the Commissioner will dismiss the complaint.

If the agricultural activity is causing or will cause water pollution, the ASA gives the owner or operator an opportunity to correct the problem. The owner or operator will be asked to develop a plan containing "stewardship measures" (often referred to as "best management practices") to prevent the water pollution. The owner or operator then develops the plan, and once the plan is developed, the District reviews it and makes recommendations to the Commissioner. If the Commissioner approves the plan, he will then ask the owner or operator to implement the plan within specified periods of time.

If the owner or operator fails to implement stewardship measures after a plan is approved, enforcement action under the ASA will be taken against the owner or operator.

In some cases, the ASA investigation will not produce sufficient evidence to support the conclusion that the agricultural activity in question is causing or will cause pollution. In those cases, the investigator will see if the owner or operator is receptive to suggestions on how the owner or operator might improve his practices to prevent complaints in the future. The purpose of the ASA is to solve problems by working one-on-one with the farmers.

SECTION A - WHAT THE ACT COVERS

1. Activities Covered by the ASA

The ASA applies to agricultural activities that are causing or will cause water pollution by sedimentation, nutrients or toxins. The only exception is when the agricultural activity in question is

already permitted by the Virginia Water Control Board (through the Department of Environmental Quality). The permits are usually: a Virginia Pollution Abatement ("VPA") permit (general or individual) for the storage and land application of animal waste; a Virginia Pollution Discharge Elimination System ("VPDES") permit for certain aquaculture facilities or for mixed production and processing operations; or a permit issued by the Commonwealth of Virginia for the land application of sewage sludge.

The ASA does not apply to forestry activities, odor concerns, or landfills. In terms of waste problems, the ASA would only apply to farm dumps where agricultural products or animal carcasses are disposed of and that have clear water quality impacts. Finally, the ASA does not apply to air pollution, or to water pollution caused by non-agricultural activities.

The Commissioner's staff will use Form 1 to determine whether or not the complaint can be investigated under the ASA. (A copy of Form 1 is in Appendix E.)

2. *Definitions of Sedimentation, Nutrients and Toxins*

Sedimentation is soil material, either mineral or organic matter, that has been transported from its original site by air, water, or ice and has been deposited in another location. The primary focus under the ASA will be on erosion of soil and its deposition in surface water.

Nutrients are dry or liquid materials that provide elements, such as nitrogen, phosphorus, and potassium that can nourish plants. Commercial fertilizers and animal manure are the two primary sources used to supply nutrients to plants in agricultural operations and will be the focal point of the ASA.

For the purposes of these guidelines, a toxin is any substance or mixture of substances intended to be used to prevent, destroy, repel or mitigate agricultural pests, or to be used as a plant regulator, defoliant or desiccant, commonly called pesticides. In addition, oil, gasoline, diesel fuel and other petroleum products are potentially toxic materials that are usually employed in farming operations.

Soil, nutrients, pesticides, oil, gasoline, and other petroleum products are good and useful when they are kept in their proper places. It is only when any of this material reaches a stream, river, well, lake or other water body that they become a problem.

3. *What the Act Means by "Pollution"*

The ASA defines pollution as "any alteration of the physical, chemical or biological properties of any state waters resulting from sedimentation, nutrients, or toxins." (Section 10.1-559.1 of the ASA.) When sediments, nutrients, or toxins enter the water from an agricultural activity, they constitute pollution under the ASA.

However, even if pollution is occurring, the ASA gives the Commissioner the power to dismiss a case if the Commissioner determines that:

" . . . the pollution is a direct result of unusual weather events or other exceptional circumstances which could not have been reasonably anticipated, or determines that the pollution is not a threat to human health, animal health, or aquatic life, water quality or recreational or other

beneficial uses . . ." (From Section 10.1-559.3 C of the ASA.)

There are two key questions for determining whether pollution is occurring or will occur.

1. Are there any barriers to prevent the sediment, nutrients, or pesticides from reaching the water?
2. Is the owner or operator using any practices designed to prevent the pollutant from reaching the water?

SECTION B - HOW INVESTIGATIONS ARE CONDUCTED

1. *Decision to Investigate*

The ASA is "complaint-driven." There can be no investigation of any farm activity unless the Commissioner receives a complaint. If the person making the complaint gives his name and no valid exception to investigation is identified in the preliminary review, the ASA requires that the Commissioner or the local District investigate the validity of the complaint. If the local District agrees to perform the District investigation, the Commissioner will ask the District to complete the investigation and provide evidence from its investigation within twenty-one days of the date the complaint was received by the Commissioner. The ASA gives the Commissioner the choice of whether or not to investigate a complaint that was made anonymously with the investigation conducted by the local District, if it wishes, or by himself. After the district and/or the Commissioner's staff submit the evidence to the Commissioner, the Commissioner will make the final determination on the complaint's validity.

The procedures described in the Guidelines are applicable to non-emergency situations. If the Commissioner is made aware of an emergency situation, special procedures may be used, to the extent authorized by law, in order to protect the environment and the public.

2. *Handling of Complaints*

Complaints are accepted by either verbal or written statement. However, when a complainant does not wish to reveal his or her name and address, the Commissioner has discretion whether or not to investigate the alleged concern. In addition, if complaints are unclear and not site specific, the Commissioner may decide not to investigate them.

3. *Who Investigates*

With the exception of the anonymous complaint, the District decides who investigates a complaint. Upon receiving a complaint, the Commissioner must notify the District and give it the option to investigate the complaint. Form 2 shows the standard manner of notification to a District and requests the District's assistance. (A copy of Form 2 is in Appendix E.)

The District has five days to tell the Commissioner whether or not it will investigate the complaint. A District may decide to assist in a joint investigation. This type of investigation would

include both District and VDACS staff with the VDACS investigator having the lead role. When the District chooses to conduct the investigation on its own, it may indicate in writing or orally its decision to the Commissioner or his staff. Form 3 is designed to provide a District with sample language that it may use in responding to the Commissioner's requests to investigate. (A copy of Form 3 is in Appendix E.)

A District may choose not to perform any investigations. Once a District has informed the Commissioner that it does not intend to perform ASA investigations, the District does not have to respond in the future to the Commissioner's notification that there is an ASA complaint involving an agricultural activity within its boundaries. As a courtesy, the Commissioner will continue to inform each District of such complaints.

4. *Time Limitations on Investigations*

The ASA requires that, for complaints investigated by a local District, the investigation must be completed within twenty-one days of the Commissioner's receipt of the complaint. The ASA does not specify a length of time in which the Commissioner or his staff must complete the investigation; however, it is the Commissioner's policy that investigations his staff or he conducts are completed within that time period. If the District conducts the investigation, the District will send its finding to the Commissioner so that he can determine whether a plan is necessary. The Commissioner is responsible for reporting his decision to the owner or operator.

5. *Notice to Owner or Operator of Investigation*

It is the policy of the Commissioner that his staff or the District, when it conducts the investigation, will give the owner or operator notice that the Commissioner has received a complaint; of the owner's or operator's agricultural activity which must be investigated. However, the Commissioner, in his discretion, may waive this policy. To document the notice and the investigation arrangements, the investigator (District or VDACS) will follow-up with a letter to the owner or operator. Form 5 shows the standard manner of a written notification for informing the owner or operator about a complaint. (A copy of Form 5 is in Appendix E.)

In those instances in which a District may not wish to give notice to the owner or operator about the complaint after they have agreed to investigate, VDACS will assist in delivering the initial notice of the investigation. VDACS will explain that a complaint has been received, that an investigation is necessary, and that someone from the District will contact the owner or operator to arrange a time to conduct a site investigation. Form 4 provides a place to document any telephone calls regarding this notice and other case activities. (A copy of Form 4 is in Appendix E.)

Regardless of who makes the initial contact, it is the policy of the Commissioner that the person who sends the written notice of the investigation to the owner or operator also send *written information* regarding the ASA. This policy may change at the discretion of the Commissioner. (VDACS will provide this information to the Districts if requested.) This information may provide the owner or operator an opportunity to learn more about the ASA, its procedures, and what the owner or operator can expect regarding resolution of the complaint.

6. *Notice of Findings from Investigation*

The Commissioner will notify the owner or operator of his decision as to whether a plan is necessary. When a District performs an investigation, it shall provide its findings to the Commissioner so that he can make this decision. This includes all materials produced and collected during the investigation period. Form 9 was created to record this type of information. The Commissioner's notice to the owner or operator will either dismiss the complaint or inform the owner or operator that he needs to submit a plan to the Commissioner describing conservation measures needed to correct the pollution problem. This plan is due 60 days after the owner or operator receives a written notice informing him that a plan is necessary. Form 6 is the standard manner of written notification to inform the owner or operator that a plan is needed to correct the water pollution problem. Information regarding planning and implementation will be sent with this notification to assist the owner or operator. The Commissioner may consider a corrective order if a plan is not submitted within 60 days. (A copy of Forms 6 and 9 are in Appendix E.)

The owner or operator must begin implementing his plan within six months of receiving notice that a plan is necessary. Then, the owner or operator must complete implementation of his plan within a period specified by the Commissioner not to exceed 18 months of receiving the notice. The owner or operator can receive an extension in some cases, as described in Section 7 below.

Upon approving the owner or operator's plan, the Commissioner will inform the owner or operator and the complainant. The District will be copied on this correspondence.

7. *Extensions of Deadlines*

Sometimes an owner or operator may need more time to complete implementation of his plan because of circumstances beyond his control. The ASA provides that the Commissioner may grant an extension of up to six months (180 days) if a hardship exists *and* if the owner or operator has made a request for an extension at least 60 days prior to the date he was supposed to have completed implementing his plan. The Commissioner will determine that a situation constitutes a hardship if it was caused by circumstances beyond the owner's or operator's control, *and* if the owner or operator has been making a good faith effort to implement his plan. Hardship can include financial problems. In his response the Commissioner will explain to the requestor of an extension the basis for his choosing to approve or reject such a request.

8. *Notification of Landowner, if Different from Operator*

The Commissioner will make a good faith effort to notify the landowner as well as the operator when the Commissioner determines that the complaint involves an agricultural activity on land that the operator rents from someone else or when the operator manages the agricultural activity for the owner of the land. If the investigation shows that no pollution problem exists, or if the problem is easily corrected by the operator's change in field management, the Commissioner may determine that notification of the landowner is unnecessary. If the problem involves an old feature (e.g., an old gully) that was created before the present operator began renting the land, or if correcting the problem requires construction, the Commissioner may determine that the landowner needs to be notified.

9. *Right of Entry*

It is the Commissioner's policy that entry onto the land to conduct an investigation will be made with the consent of the owner or operator. However, it should be noted that the ASA gives the Commissioner, his designee, or a District the right to enter the *land* to determine whether or not the complaint is valid. In addition, the Commissioner, his designee, or the District may enter the same land to check implementation of stewardship measures specified in a corrective order and maintenance of stewardship measures. This entry onto private property must be handled in accordance with constitutional requirements.

It is the Commissioner's policy that if a complaint alleges water pollution created by erosion coming from a specific field on the farm, then the ASA investigator will not enter other fields. If the complaint is made more broadly to say that erosion is coming from the farm as a whole into X stream, then the investigation will cover all of the farm that drains into X stream. If the complaint is made even more broadly to say that erosion is coming from the farm as a whole without naming the water body, then the investigation will cover the whole farm.

With the owner's or operator's consent, the ASA investigator will enter fields not covered by the complaint, examine or do other things that are relative to the investigation if consent is given voluntarily by someone who has the intelligence and ability to understand the situation and the possible consequences.

It is the policy of the Commissioner that the owner or operator of a farm that is subject of a complaint will be given notice of intended entry to investigate the complaint. A phone call or statement to the owner or operator is sufficient. After a call, written notice to the owner or operator will confirm the investigator's oral statements. Form 5 shows the standard manner of written notification to the owner or operator before entering land that is the subject of a complaint. (A copy of Form 5 is in Appendix E.)

If an owner or operator denies the Commissioner's representative entry onto the land or later withdraws his or her consent regarding entry, the investigator will leave the property immediately and report this to the Commissioner as soon as possible. The ASA authorizes the Commissioner to obtain a court order allowing entry.

10. *Purpose and Scope of Investigation*

The principal purpose of the investigation is to determine if there is substantial evidence that the agricultural activity in question is causing or will cause water pollution from sedimentation, nutrients or toxins, as alleged in the complaint. When performing an investigation, information to answer this question can be recorded on Form 9. (A copy of Form 9 is in Appendix E.)

It is the Commissioner's policy that activities that are causing or will cause pollution that were *not* the subject of the complaint should be pointed out to the owner or operator as areas that should be addressed, even though these areas are not covered by the ASA complaint. It is also the Commissioner's policy that the ASA's jurisdiction is "complaint-driven" and limited to

the terms of the complaint.

11. *Evidence*

The ASA requires that there be "substantial evidence" that the agricultural activity is causing or will cause water pollution. "Substantial evidence" means more than a "scintilla" of evidence but less than a "preponderance" of the evidence. "Scintilla" means just a trace of evidence. Preponderance of the evidence means that overall there is more evidence showing that erosion has been or will be caused by the activity than evidence showing the opposite.

12. *Sample Collection Techniques*

To maintain uniformity in the state's system of collecting water samples, VDACS will use the procedures developed by the Virginia Water Control Board (VWCB), as set forth in the applicable sections of VWCB's "Water Quality Assessment Operating Procedures Manual".

Due to the complexity and cost of water and fecal sampling and analysis, samples should be taken only when they are absolutely necessary to prove a case. When an investigator can see that pollutants are entering or will enter the water body in question, he will not need to take samples because the case can be proven through photographs, maps, eye-witness testimony, and the physical law of gravity. The experience of other states that have programs similar to the ASA suggests that sampling is only necessary in a few cases. For scientific analysis of any water or other evidence, the District investigator should contact a VDACS Agricultural Stewardship Coordinator for specific instructions. VDACS will pay for the scientific analysis of any water or other evidence collected by the District during the investigation period.

SECTION C - CONFIDENTIALITY OF INFORMATION

The law requires the Commissioner of Agriculture and Consumer Services to hold records of active investigations in confidence. These records of active investigations include those records of active investigations created or held by the Districts pursuant to the Agricultural Stewardship Act. The owner or operator may review whatever notes and records the investigator has made after an ASA investigation is concluded. An investigation is concluded when the Commissioner has decided whether an agricultural activity is creating or will create pollution that requires an agricultural stewardship plan.

A District could receive a request under the Virginia Freedom of Information Act ("FOIA") (Chapter 37 (Sections 2.2-3700 et seq.) of Title 2.2 of the Code of Virginia) to disclose records regarding an active investigation. Any request made to the District for records of active investigations under the Agricultural Stewardship Act should be referred immediately to the attorney who represents the District.

SECTION D - SUBSEQUENT VISITS TO FARM TO CHECK IMPLEMENTATION

In most cases, after the site investigation has been completed, no further on-site reviews are necessary once the Commissioner has sent a notice advising that a stewardship plan will be required. (Revision Effective June 7, 2004)

However, subsequent on-site reviews are necessary when an ASA plan is required. The purpose of the subsequent on-site review is to determine whether the owner or operator is implementing his ASA plan in accordance with his implementation schedule.

Subsequent on-site reviews have enforcement implications, which are the Commissioner's responsibility; so, Districts should not undertake subsequent visits without VDACS' express agreement. (This need for agreement from the Commissioner does not apply to a District's best management practices "spot-check" to determine compliance with a District cost-share agreement, even for a practice installed to meet ASA requirements.)

SECTION E - APPEALS AND FACT FINDING CONFERENCES

If an owner or operator who has been issued a notice under the Act fails to submit an agricultural stewardship plan, begin actively implementing the plan, complete implementation of the plan, or maintain the stewardship measures, the Commissioner shall issue a corrective order to such owner or operator. The order shall require that such activity be accomplished within a stated period of time.

The Commissioner shall issue a corrective order only after an informal fact-finding conference. Informal fact-finding conferences are used to determine the factual basis for the Commissioner's decisions under the Agricultural Stewardship Act.

ASA gives "persons aggrieved" the right to appeal decisions of the Commissioner to the Virginia Soil and Water Conservation Board.

SECTION F - SOURCES OF ASSISTANCE FOR OWNER OR OPERATORS

There are several sources of assistance available to owners or operators to address pollution problems and to develop stewardship measures and plans. Areas of assistance and possible sources are listed below:

1. *Technical Assistance*

Planning and, if necessary, engineering assistance is often available through:

- Local Soil and Water Conservation District
- Department of Conservation and Recreation
- U. S. Department of Agriculture, Natural Resources Conservation Service
- Virginia Cooperative Extension
- Virginia Department of Agriculture and Consumer Services
- Private businesses
- Consultants

2. *Cost-Sharing*

Cost-Share assistance that may be available to implement plans is offered by:

- Local Soil and Water Conservation District
- U. S. Department of Agriculture, Farm Service Agency
- U. S. Department of Agriculture, Natural Resources Conservation Service
- Virginia Department of Environmental Quality

3. *Financial Planning*

Financial planning is always a consideration when making decisions that affect a farming operation. These organizations can be of assistance to the farmer in his financial planning:

- Virginia Cooperative Extension (e.g., Farm Management Agents)
- Private financial institutions (e.g., commercial banks, agricultural financing organizations)

4. *Physical Planning for Compliance with ASA*

The ASA requires that the plan be returned to the Commissioner's Office and the District within 60 days after receiving notice that a plan is necessary. The local District must then review the plan. If the plan meets the ASA requirements, then the Commissioner will send notice of approval to the owner or operator within 30 days. The owner or operator must begin implementing the plan within six months and complete plan implementation within 18 months unless specified differently by the Commissioner. The Commissioner may require an implementation schedule consistent with seasons and other temporal considerations, therefore, increasing the chance of success in establishment or construction of the measures required in the plan. The Commissioner may consider a corrective order if plan implementation schedule is not met or if the problem is not corrected.

A. *Public Sources of assistance in planning*

- Local Soil and Water Conservation District
- Virginia Department of Conservation and Recreation
- USDA, Natural Resource Conservation Service
- Virginia Cooperative Extension
- Virginia Department of Agriculture and Consumer Services

B. *Private Sources*

- Private businesses (e.g., engineering and consulting firms)
- Agribusiness organizations

C. *Required Contents of Plans*

The plan must include the following minimum requirements under the ASA:

- Stewardship measures needed to prevent the pollution, and
- Implementation schedule.

The plan should also include:

- A map showing area of concern and affected water feature
- Statement of pollution problem
- Signature page for the owner or operator, local district director and Commissioner

The owner or operator will have received a letter from the Commissioner notifying the owner or operator of the results of the investigation. This letter specifies the components of the agricultural activity that are causing or will cause water pollution. (A copy of this letter is in Appendix E, labeled as Form 6.) All of these components must be addressed in the plan.

If necessary, simple plans can be converted into more sophisticated formats after this deadline has been met. Planners should be sensitive to the fact that the owner or operator has a second deadline to meet: the owner or operator must begin implementing the plan within six months of receiving the official notice that the plan has been approved. Form 10 provides an example format of an ASA plan. (A copy of Form 10 is in Appendix E.)

Amendments to plans are acceptable as long as the amendments prevent or eliminate the pollution. Amendments must be reviewed by VDACS before the plan completion date. An amendment that necessitates an extension of time will not be denied simply because the time of completion will be delayed; however, the Commissioner may consider whether the additional time is needed because of the actual change in plans or because of any lack of due diligence by the owner or operator.

To make the planning process most effective, owners or operators should be given options for solving their pollution problem whenever possible. In terms of appropriate options, the ASA defines stewardship measures as “the best available nonpoint source control methods, technologies, processes, siting criteria, operating methods or other alternatives.” There are often a variety of best management practices that can be employed to solve a single pollution problem. Thus, the planner will often have a wide variety of options from structural practices to changes in operating methods that can be offered to the owner or operator as solutions to the pollution problem. These options need not be the most expensive or employ the most sophisticated technology; they only need to prevent the pollution in question within the timeframe of the plan to be the “best”. A plan that merely substitutes one form of pollution for another, however, is not acceptable.

SECTION G - VIOLATIONS AND PENALTIES

Under the ASA, the Commissioner issues a corrective order when the owner or operator fails to comply with the ASA. The Commissioner *must* issue a corrective order if the owner or operator is found to need a plan and fails to submit or to implement his plan according to the Act's standards {Section 10.1-559.4}.

A person who is subject to a corrective order issued by the Commissioner has the right to go

to the Soil and Water Conservation Board to appeal that corrective order. Further, that person has the right to appeal the decision of the Board to the appropriate circuit court.

If an owner or operator fails to comply with the ASA, he or she may be subject to civil penalties and orders issued by the Commissioner. The ASA does not create any crime -- only civil violations. (See Appendix B, Civil Penalty Matrix for the Agricultural Stewardship Act Program.)

SECTION H - INTERGOVERNMENTAL COOPERATION

The ASA requires that agricultural activities that are causing or will cause water pollution be corrected. It is very important that all agencies work together in a cooperative effort using a common-sense approach to assist owners or operators in effectively correcting these problems. Listed below are agencies and their roles in relation to the ASA.

1. *Department of Environmental Quality and the Virginia Water Control Board ("DEQ" and "VWCB")*

Virginia's State Water Control Law gives the VWCB broad jurisdiction over almost all types of water pollution, whether point source or nonpoint source, whether agricultural or non-agricultural in origin, and involving any type of pollutant. (See Section 62.1-44.5 of the Code of Virginia.) The ASA gives the Commissioner jurisdiction over a smaller portion of this same area of concern: water pollution caused by three types of pollutants coming from agricultural activities not currently subject to a permit issued by VWCB through DEQ. The Commissioner's and the VWCB's jurisdiction overlap, but the Commissioner's jurisdiction is a subset of the VWCB's. Therefore, DEQ and the Commissioner shares jurisdiction over agricultural nonpoint source pollution.

The VWCB has asserted its jurisdiction over certain types of agricultural operations by requiring them to obtain permits. For those agricultural activities that are subject to a permit issued by the VWCB (through DEQ), the ASA is not applicable. The ASA expressly provides that those operations are exempt from the ASA. When a complaint arises regarding an operation that is subject to a VWCB permit, the complaint will be dismissed. Then the owner or operator should be informed that he should check to make certain that the owner or operator is in compliance with his VWCB permit. The owner or operator should be given the address and phone number of his regional DEQ office, so that DEQ can answer any questions that the owner or operator may have. After the complaint is dismissed, the complainant will be notified explaining that DEQ has jurisdiction.

2. *Department of Conservation and Recreation ("DCR")*

DCR is Virginia's primary natural resource conservation agency and provides owners or operators with technical assistance in developing nutrient management plans. In this program, DCR maintains a staff of specialists in field offices throughout the state to provide nutrient management planning (NMP) assistance. Closely connected with the NMP technical assistance program is DCR's certification program for nutrient management planners from both private and public organizations.

In addition to its programs related to NMP, DCR provides the Districts with coordination services at the state level. DCR is the major conduit of funds for Districts. An integral part of this

program is the state cost-share program that DCR administers and the Districts implement. In relation to the ASA, DCR can provide its NMP assistance to owners or operators with corresponding ASA planning needs, as well as cost-share assistance.

DCR collects land-use and related data from across the state to identify small watersheds where the potential for nonpoint source pollution is high. DCR also provides various predictive modeling services that help estimate the progress made in reducing nonpoint source pollution.

Of particular interest to the ASA program is DCR's close relationship with the Virginia Soil and Water Conservation Board ("Board"). DCR provides the staff services to the Board that help the Board meet its ASA obligations.

3. *Natural Resources Conservation Service ("NRCS")*

Established during the 1930's within the United States Department of Agriculture, the NRCS pioneered the planning approach to conservation management. The NRCS has developed numerous conservation techniques and practices to conserve, improve and sustain natural resources on private lands.

In addition to setting the standards for a wide variety of conservation practices, the NRCS provides technical assistance to landowners and managers in many localities throughout the State. They often work closely with the local Districts. The NRCS also assists other federal agencies in administering the federal cost-share program for agricultural conservation practices. In relation to the ASA, the NRCS continues to provide its technical and cost-share assistance (when and where appropriate) to owners or operators faced with ASA needs.

4. *Virginia Cooperative Extension ("Extension")*

Extension has played an important role over the years by providing landowners and managers with education regarding a wide variety of concerns. These educational services range from production matters to farm financial planning to natural resource technical and planning assistance.

In relation to the ASA, Extension continues to provide technical and planning assistance to owners or operators to prevent complaints under the ASA and to assist in the preparation of ASA plans, at least in those areas where Extension has resources to provide such assistance. Extension's Farm Management Agents, who provide financial planning assistance, may be called upon to provide financial planning assistance in relation to the development of an ASA plan. In response to owner or operator questions, Extension is also likely to provide some education to owners or operators regarding the ASA itself.

In addition, Extension has developed an on-farm self-assessment program that can help producers identify potential sources of water pollution. This program is called a Farm*A*Syst.

Local Extension agents can help farmers learn more about Farm*A*Syst. Using Farm*A*Syst can be an important step that farmers can take to prevent certain ground water pollution problems.

5. *Soil and Water Conservation Districts (“Districts”)*

As described in other sections of these guidelines, the Districts may play a role in investigating complaints, if they choose to do so. The decision of whether or not it will perform investigations lies with each District individually. Pursuant to the ASA, all Districts will play a role in the ASA by reviewing ASA plans that are being sent to the Commissioner.

As political subdivisions of the Commonwealth, the Districts are the local sources of technical and planning assistance for agricultural conservation practices, in many instances. The Districts, together with other conservation agencies, have helped produce an advanced agricultural system that blends conservation and resource protection with enhanced production techniques.

The Districts are the local administrators of the cost-share program. Beyond the investigative and review roles that the ASA speaks to directly, the Districts can provide continued planning and technical assistance to owners or operators with ASA needs. Where and when appropriate, the Districts can provide cost-share assistance.

6. *Chesapeake Bay Local Assistance Department (“CBLAD”)*

The Chesapeake Bay Preservation Act (“Bay Act”) was enacted in 1988, and CBLAD was established shortly thereafter to administer the Bay Act’s programs.

Section 10.1-559.10 of the ASA makes it clear that any local government may, subject to certain conditions, adopt an ordinance establishing a process for filing complaints, investigating them, and creating agricultural stewardship plans where necessary to correct pollution problems.

Likewise, Section 10.1-559.11 seeks to address potential conflicts with the Bay Act regulations. This section states that nothing in the ASA shall be interpreted to duplicate the agricultural requirements in the regulations adopted pursuant to the Bay Act. In fact, the ASA is intended to supplement and work alongside the Bay Act and its regulations. ASA investigators and planners should note that, while the ASA guidelines seek to provide a consistent implementation process across local jurisdictional boundaries, local enforcement of violations of Bay Act ordinances may vary somewhat from one locality to another.

Under the Bay Act regulations and local Bay Act ordinances, agricultural landowners are required to (1) establish (where one does not exist) and maintain a 100-foot-wide vegetated buffer separating the land upon which agricultural activities are being conducted and adjacent environmentally sensitive features, and (2) obtain a soil and water quality conservation plan (SWQCP) addressing erosion, nutrients and pesticides. This plan must be approved by the local District Board. A SWQCP, or parts thereof, is only required to be implemented if a reduction in the width of the 100-foot-buffer is sought.

- If an ASA investigator is informed by the owner or operator that the owner or operator has a Bay Act SWQCP, the investigator should review the plan to see what best management practices (BMPs) have been recommended for water quality

protection and what is actually being implemented by the owner or operator.

- In some cases, the ASA investigator may find that the BMP recommended in the SWQCP already addresses the water quality problem complained of, but was not required to be implemented under the Bay Act. Rather than duplicating efforts, the ASA investigator may simply refer to the information in the SWQCP and recommend that the owner or operator implement any or all relevant parts of the plan that address the identified ASA water quality problem.
- Local governments in Tidewater Virginia may consider the ASA as a way by which the ASA's enforcement mechanisms may be used to further the goals of the Bay Act.
- If an ASA complaint involves a Bay Act vegetated buffer (e.g., a channel has formed in the field and continues through the buffer emptying directly into the stream), the stewardship measures included in the ASA plan must not conflict with either the allowable buffer reductions under the Bay Act regulations or with the buffer performance criteria established via the Bay Act. If the ASA investigator or planner has questions regarding the reduction rules or the performance criteria, the investigator or planner should contact the local District.

7. *Soil and Water Conservation Board ("Board")*

The Board provides the initial forum in which appeals from the Commissioner's decision may be heard. Any person wishing to submit an ASA appeal to the Board should contact DCR for more information.

8. *Virginia Department of Agriculture and Consumer Services ("VDACS")*

Beyond providing assistance to the Commissioner in investigations and enforcement, VDACS' staff assists in communicating the results of the investigations with complainants.

VDACS also serves as the primary coordinating agency for administering the ASA. In addition to developing these guidelines, VDACS initiates the reporting and assessment processes annually. The purposes of the annual reporting and assessment process is to identify trends and needs and to seek means of addressing any problems that develop in the system of administering the ASA.

In some cases, VDACS provides technical and planning assistance to owners or operators in the wake of a complaint. VDACS' other main role is to coordinate the administration of the ASA with the Districts and other partners. VDACS' main goal in administering the ASA is to institute a "farmer-friendly" set of mechanisms by which owners or operators can address water pollution problems on a case-by-case basis, without the necessity of further overall regulation.

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(Revision Effective June 7, 2004)

APPENDIX A

Agricultural Stewardship Act

AGRICULTURAL STEWARDSHIP ACT

The following is the latest version of the Agricultural Stewardship Act, complete with the amendments made to the Act in the 2000 session of the General Assembly and signed by the Governor on April 9, 2000.

§ 10.1-559.1. Definitions.

As used in this article, unless the context requires a different meaning:

"Agricultural activity" means any activity used in the production of food and fiber, including, but not limited to, farming, feedlots, grazing livestock, poultry raising, dairy farming, and aquaculture activities.

"Agricultural stewardship plan" or "plan" means a site-specific plan for an agricultural activity to manage, through use of stewardship measures, one or more of the following: soil, water, plants, plant nutrients, pest controls, wastes, and animals.

"Commissioner" means the Commissioner of Agriculture and Consumer Services.

"Complaint" means an allegation made by any person to the Commissioner that an owner's or operator's agricultural activity is creating or, if not changed, will create pollution and that states the location and nature of such agricultural activity.

"Informal fact-finding conference" means an informal fact-finding conference conducted in accordance with

§ 9-6.14:11.

"Operator" means any person who exercises managerial control over any agricultural activity.

"Owner" means any person who owns land on which an agricultural activity occurs.

"Person" means an individual, a partnership, an association, a corporation or any government or unit of government.

"Pollution" means any alteration of the physical, chemical or biological properties of any state waters resulting from sedimentation, nutrients, or toxins.

"State waters" means all water, on the surface or in the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction.

"Stewardship measures" or "measures" means measures for controlling the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution which reflect the pollutant reduction achievable through the application of the best available nonpoint pollution control methods, technologies, processes, siting criteria, operating methods or other alternatives.

"Stewardship measures" or "measures" includes (i) agricultural water quality protection management measures described in the Virginia Agricultural Best Management Practices Manual and (ii) agricultural water quality protection management measures contained in the

§ 10.1-559.2. Exclusions from article.

This article shall not apply to any agricultural activity to which (i) Article 12 (§ 10.1-1181.1 et seq.) of Chapter 11 of this title or (ii) a permit issued by the State Water Control Board, applies.

§ 10.1-559.3. Complaint; investigation; agricultural stewardship plan.

A. After April 1, 1997, upon receiving a complaint, unless the complaint was made anonymously, the Commissioner shall request that the directors of the district in which the land lies determine the validity of the information within twenty-one days. The Commissioner may investigate or ask the directors of the district to investigate an anonymous complaint.

B. The district chairman may, on behalf of the district, act upon or reject the Commissioner's request. If the district declines to act, it shall within five days so advise the Commissioner, who shall determine the validity of the complaint.

C. If, after investigating a complaint, the Commissioner determines that substantial evidence exists to prove that an agricultural activity is creating or will create pollution, the Commissioner shall notify the owner or operator by registered mail, return receipt requested. If, after investigation, the Commissioner determines that the pollution is a direct result of unusual weather events or other exceptional circumstances which could not have been reasonably anticipated, or determines that the pollution is not a threat to human health, animal health, or aquatic life, water quality or recreational or other beneficial uses, the Commissioner may forego any additional action. Copies of the notice shall be sent to the district in which the agricultural activity is located. The notice shall state that, within sixty days of the receipt of the notice, the owner or operator shall submit to the Commissioner and district an agricultural stewardship plan which includes stewardship measures needed to prevent or cease the pollution. The district shall review the plan and, if the plan includes such measures, the Commissioner shall approve the plan within thirty days after he receives it. Upon approving the owner's or operator's plan, the Commissioner shall inform the owner or operator and the complainant that a plan has been approved. The owner or operator shall begin implementing the approved agricultural stewardship plan within six months of the date on which the owner or operator received the notice that the agricultural activity is creating or will create pollution.

D. The plan shall include an implementation schedule, and implementation of the plan shall be completed within a period specified by the Commissioner, based upon the seasons and other temporal considerations so that the period is that during which the possibility of success in establishment or construction of the measures required in the plan is the greatest, which shall not exceed eighteen months from receipt of notice. However, the Commissioner may grant an extension of up to 180 days if (1) a hardship exists and (ii) the request for an extension was made not later than sixty days before the scheduled completion date. The Commissioner shall, within thirty days of receiving the request, inform the owner or operator whether or not an extension has been granted.

E. After implementing the approved plan according to the provisions of the chapter, the owner or operator shall maintain the stewardship measures established pursuant to the plan. The owner or operator may change the agricultural activity so long as the Commissioner is notified.

F. If the Commissioner determines that substantial evidence does not exist to prove that an agricultural activity is creating or will create pollution or that any pollution was caused by unusual weather events or other exceptional circumstances or that the pollution is not a threat to human health, animal health or aquatic life or recreational or other beneficial uses, he shall inform the complainant and the owner or operator of his determination. Upon approving the owner's or operator's agricultural stewardship plan, the Commissioner shall inform the owner or operator and the complainant that a plan has been approved.

§ 10.1-559.4. Issuance of corrective orders.

A. If any owner or operator who has been issued a notice under § 10.1-559.3 fails to submit an agricultural stewardship plan, begin actively implementing the plan, complete implementation of the plan, or maintain the stewardship measures as provided in § 10.1-559.3, the Commissioner shall issue a corrective order to such owner or operator. The order shall require that such activity be accomplished within a stated period of time.

B. A corrective order issued pursuant to subsection A shall be issued only after an informal fact-finding conference, with reasonable notice being given to the owner or operator, or both, of the time, place and purpose thereof, and shall become effective not less than five days after date of delivery to the last known address as provided in subsection C. The corrective order shall be suspended pending appeal by the recipient made within five days after delivery of such order to the last known address of the owner or operator.

C. The Commissioner shall mail a copy of the corrective order by certified mail, return receipt requested, sent to the last known address of the owner or operator, or by personal delivery by an agent of the Commonwealth.

D. Notwithstanding other provisions of this article, if the Commissioner determines that a recurring polluting condition which is the subject of an approved plan is occurring or that an emergency condition exists due to runoff from an agricultural activity which is causing or is likely to cause an imminent or substantial danger to (i) the public health, safety or welfare or to the health of animals, fish or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural, or other beneficial uses, the Commissioner may issue, without advance notice, informal fact-finding conference or hearing, an emergency corrective order. Such order may direct the owner or operator of the agricultural activity, or both, to cease immediately all or part of the agricultural activity, and to implement specified stewardship measures or any necessary emergency measures within a stated period of time. Following the issuance of an emergency corrective order, the Commissioner shall provide the opportunity for a hearing or an informal fact-finding conference, after reasonable notice as to the time and place thereof, to the owner or operator, for the purpose of affirming, modifying, amending or canceling the emergency corrective order.

E. The Commissioner shall not issue a corrective order to any land owner or operator if the person is:

1. Actively implementing the agricultural stewardship plan which has been reviewed by the district in which the agricultural activity is located and approved by the Commissioner, or
2. Actively implementing stewardship measures that have failed to prevent pollution, if the Commissioner determines that the pollution is a direct result of unusual weather events or other exceptional circumstances which could not have been reasonably anticipated.

§ 10.1-559.5. Right of entry; court enforcement.

A. The district or the Commissioner or his designee may enter land which is the subject of a complaint, after notice to the owner or operator, to determine whether the agricultural activity is causing or will cause pollution of state waters.

B. Upon failure of any owner or operator to allow the Commissioner or his designee entry in accordance with subsection A, to implement stewardship measures in the time specified in a corrective order, or to maintain stewardship measures in accordance with subsection E of § 10.1-559.3, the Commissioner may present to the circuit court of the county or city in which the land is located, a petition asking the court to require the owner or operator to allow the Commissioner or his designee entry or to carry out such measures within a specified time. If the owner or operator fails to implement the stewardship measures specified in the court order, the Commissioner or his representative may enter the land involved and implement the measures. The Commissioner shall have the authority to recover the costs of implementing the stewardship measures from the owner or operator.

§ 10.1-559.6. Appeal.

Decisions of the Commissioner may be appealed by persons aggrieved to the Virginia Soil and Water Conservation Board and thereafter to the circuit court in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.). The imposition of any civil penalty shall be suspended pending such appeals.

§ 10.1-559.7. Penalties; injunctions; enforcement actions.

A. Any person violating § 10.1-559.4 or § 10.1-559.5 shall be subject to a civil penalty not to exceed 55,000 for every violation assessed by the Commissioner or Board. Each day the violation continues shall constitute a separate offense. Payments to satisfy such penalties shall be deposited in a non-reverting, special fund to be used by the Department of Conservation and Recreation to provide financial assistance to persons implementing measures specified in the Virginia Agricultural Best Management Practices Manual. No person who has been assessed a civil penalty under this section shall be eligible for such financial assistance until the violation has been corrected and the penalty paid.

B. In determining the amount of any penalty, factors to be considered shall include but not be limited to the willfulness of the violation, any history of noncompliance, the actions of the owner or operator in notifying, containing and cleaning up any discharge, the damage or injury to state waters or the impairment of its uses, and the nature and degree of injury to or interference with general health, welfare and property.

C. The Attorney General shall, upon request, bring an action for an injunction or other appropriate legal action on behalf of the Commissioner or Board to enforce the provisions of this article.

§ 10.1-559.8. Liens.

If a person who is required to pay a civil penalty under this chapter fails to do so, the Commissioner may transmit a true copy of the order assessing such penalty to the clerk of the circuit court of any county or city wherein it is ascertained that the person owing such penalty has any estate; and the clerk to whom such copy is transmitted shall record it, as a judgment is required by law to be recorded, and shall index it in the name of the Commonwealth as well as in the name of the person owing the civil penalty, and thereupon there shall be a lien in favor of the Commonwealth on the property within such locality of the person owing the civil penalty in the amount of the civil penalty. The Commissioner and Board may collect civil penalties which are owed in the same manner as provided by law in respect to judgment of a court of record.

§ 10.1-559.9. Guidelines to be published by Commissioner, report.

A. In consultation with the districts, the Department and interested persons, the Commissioner shall develop guidelines for the implementation of this article. These guidelines shall address, among other things, the conduct of investigations, sources of assistance for owners and operators, and intergovernmental cooperation. Within ninety days of the effective date of this section, the Commissioner shall submit the proposed guidelines to the Registrar of Regulations for publication in the Virginia Register of Regulations. At least thirty days shall be provided for public comment after the publication of the proposed guidelines. After the close of the public comment period, the Commissioner shall consider the comments that he has received and may incorporate any changes into the guidelines that he deems appropriate. He shall develop a written summary and analysis of the comments, which shall be made available to the public upon request. Thereafter, the Commissioner shall submit final guidelines for publication in the Register. The guidelines shall become effective on April 1, 1997. The Commissioner may alter the guidelines periodically after his proposed changes have been published in the Register and a public comment period has been provided.

B. The Commissioner shall compile a report by August 31 annually listing the number of complaints received, the nature of each complaint, the actions taken in resolution of each complaint, and any penalties which may have been assessed. The Commissioner shall have the discretion to exclude and keep confidential specific information regarding ongoing investigations. The Commissioner shall (1) provide the report to the Board, the Department and to every district, (ii) publish notice in the Virginia Register that the report is available, and (iii) make the report available to the public upon request.

§ 10.1-559.10. Local ordinances.

A. Any county, city or town may adopt an ordinance creating a complaint, investigation and agricultural stewardship plan development program. Ordinances adopted pursuant to this section may contain only provisions which parallel §§ 10.1-559.2 and 10.1-559.3. No such ordinance shall provide for the imposition of civil or criminal sanctions against an operator or owner who fails to implement a plan. If an owner or operator fails to implement a plan, the local governing body shall submit a complaint to the Commissioner as provided in

§ 10.1-559.3.

B. This section shall not apply to any ordinance (i) in existence on July 1, 1996, or (ii) adopted pursuant to the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.).

§ 10.1-559.11. Construction of article.

Nothing in this article shall be construed as duplicative of regulations governing agricultural practices under the Chesapeake Bay Preservation Act.

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APPENDIX B

Civil Penalties Matrix for the Agricultural Stewardship Act Program

(As it appears in *The Virginia Register of Regulations*)

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Civil Penalties Matrix for the Agricultural Stewardship Act Program (Authority: Section 10.1-559.7 of the Code of Virginia)

VIOLATION

"Any person violating Section 10.1-559.4 or Section 10.1-559.5 shall be subject to a civil penalty not to exceed \$5,000 for every violation assessed by the Commissioner of Agriculture and Consumer Services. Each day the violation continues shall constitute a separate offense." (Section 10.1-559.7(A) of the Code of Virginia)

The following are violations of Section 10.1-559.4 of the Code of Virginia:

1. The owner or operator fails to submit an Agricultural Stewardship Plan after the Commissioner has issued a Corrective Order (Authority: Section 10.1-559.4(A) of the Code of Virginia);

(Base civil penalty-\$200)

2. The owner or operator fails to begin actively implementing an Agricultural Stewardship Plan after the Commissioner has issued a Corrective Order (Authority: Section 10.1-559.4(A) of the Code of Virginia);

(Base civil penalty-\$500)

3. The owner or operator fails to complete the implementation of an Agricultural Stewardship Plan after the Commissioner has issued a Corrective Order (Authority: Section 10.1-559.4(A) of the Code of Virginia);

(Base civil penalty-\$500)

4. The owner or operator fails to maintain the required stewardship measures after the Commissioner has issued a Corrective Order (Authority: Section 10.1-559.4(A) of the Code of Virginia);

(Base civil penalty-\$250) and

5. The owner or operator fails to comply with an Emergency Corrective Order (Authority: Section 10.1-559.4(D) of the Code of Virginia).

(Base civil penalty-\$500)

The following are violations of Section 10.1-559.5 of the Code of Virginia:

The owner or operator denies the Commissioner or his designee the right of entry (Authority: Section 10.1-559.5(A) of the Code of Virginia).

(Base civil penalty-\$500)

The following factors shall be considered in determining the amount of any civil penalty:

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1. If there is willfulness of violation, add \$500 to the base civil penalty;

2. If there is history of noncompliance with Agricultural Stewardship Act, add \$1000 to the base civil penalty;

3. If there is failure of owner in notifying, containing and cleaning up any discharge, add \$1000 to the base civil penalty;

4. If there is damage or injury to state waters or the impairment of its uses, add \$1500 to the base civil penalty; and

5. When the injury is of such a nature and degree as to interfere with general health, welfare and property, add \$1500 to the base civil penalty.

STATE AIR POLLUTION CONTROL BOARD

Extension of Public Comment Period for Regulation Revision YY Concerning New and Modified Source Review

The Department of Environmental Quality, on behalf of the State Air Pollution Control Board, announced an additional public comment period and public hearing on proposed amendments to the Regulations for the Control and Abatement of Air Pollution concerning new and modified source review. The announcement appeared in the Register of Regulations on August 27, 2001, Volume 17, Issue 25, page 3653.

The department has decided to extend the public comment period from 45 days to 60 days, making the deadline for submittal of comments October 26, 2001. Comments are to be submitted to Mary E. Major, Environmental Program Manager, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4423, FAX (804) 698-4510 or e-mail memajor@deq.state.va.us and in order to be considered must be received by 4:30 p.m. on October 26, 2001.

STATE CORPORATION COMMISSION

EDITOR'S NOTE: Appendices A, B and C referenced in the following order are not being published. However, these appendices are available for public inspection at the State Corporation Commission, Document Control Center, Tyler Building, 1st Floor, 1300 East Main Street, Richmond, VA from 8:15 a.m. to 5 p.m., Monday through Friday.

AT RICHMOND, AUGUST 29, 2001

PETITION OF
VIRGINIA
TELECOMMUNICATIONS
INDUSTRY ASSOCIATION

CASE NO.
P00010172

For the establishment of formal
procedures for annual
certification

Monday, October 8, 2001

APPENDIX C

Steps In Addressing Agricultural Stewardship Act Complaints

STEPS IN ADDRESSING AN ASA COMPLAINTS

1. **Commissioner's Office receives complaint:**
 - Commissioner's Office reviews complaint and determines if the ASA has jurisdiction.
 - If not under ASA's jurisdiction, Commissioner dismisses complaint.
 - If under the ASA's jurisdiction, Commissioner determines whether investigation is necessary.
2. **Commissioner's Office determines whether the investigation is necessary:**
 - In cases with non-anonymous complaints, an investigation is required.
 - In cases with anonymous complaints, the Commissioner has the option to investigate.
3. **If investigation is needed:**
 - Commissioner's Office contacts local Soil and Water Conservation District and informs it of the complaint.
 - District has five days to notify the Commissioner's Office whether or not it will investigate.
4. **Contact the owner/operator to inform him or her of complaint and the need to investigate, followed by a letter.**
 - Farmer's options:
 - *Grant permission to enter land, or*
 - *Deny request to enter land*
 - If farmer denies request to enter land, the Commissioner may seek a court order .
5. **Investigate complaint and report findings to Commissioner's Office within 21 days of receiving complaint.**
6. **Commissioner's Office reviews investigation report and, if needed, gathers more information. Commissioner's Office then makes decision as to whether complaint is founded, then contacts farmer with findings (via registered mail, return receipt requested) and the District within 30 days of receiving investigation report.**
 - If complaint is unfounded
 - Action on complaint complete
 - Complainant contacted and informed on reasons why complaint was unfounded.
 - If complaint is founded – Finding is reviewed and discussed with farmer
 - Farmer accepts decision, or
 - Farmer appeals decision to the Virginia Soil and Water Conservation Board
 - Farmer accepts Board's decision, or
 - Farmer appears to local Circuit Court

7. **Farmer develops plan to address pollution and sends copy to the Commissioner's Office and District within 60 days after receiving notice of investigation findings and of the need to develop a plan.**
8. **District reviews plan and sends its recommendations to the Commissioner's Office.**
9. **Commissioner's Office reviews plan; District recommendations and notifies farmer.**
 - Plan approved, and/or amended with conditions
 - Plan rejected
 - *Farmer develops new plan and repeats submittal process, or*
 - *Farmer appeals through the process described in item 6.*
10. **Commissioner's Office contacts complainant, informs him or her of action taken, and plan implementation completion date.**
11. **Six months after farmer is notified that plan is necessary, Commissioner's Office will check to ensure that farmer has begun implementing plan.**
 - Implementation has begun, or
 - Implementation has not begun
 - Commissioner institutes an informal fact-finding conference with the owner / operator
 - ASA requires Commissioner to issue a corrective order (via certified mail, return receipt requested) to farmer at this point
 - *Owner/operator may appeal through same process as described in item 6.*
12. **By the completion date, a site review will be conducted to ensure complete plan implementation.**
 - Once plan is implemented, farmer is required to maintain
 - *Hardship cases can receive a 180-day extension if farmer's request is received 60 days prior to completion date and is approved by the Commissioner's Office.*
 - *Farmer can appeal through the same process described above in item 6.*

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APPENDIX *D*

Steps to Consider During An Agricultural Stewardship Act Investigation

Steps to Consider During An Agricultural Stewardship Act Investigation

When beginning an investigation, it is likely to help if you keep several key questions in the back of your mind. These questions are:

1. What pollutant (sediment, nutrient, pesticide or petroleum product) was the subject of the complaint?
2. What water body (stream, river, well, etc.) was the subject of the complaint?
3. Is there a physical barrier (e.g., buffer, berm, slope, etc.) that would help prevent the pollutant in question (soil, nutrients, pesticides or petroleum products) from reaching the stream, river or well?
4. Is the farmer using any BMPs that are designed to help prevent the pollutant in question from reaching the stream, river or well?

With these questions in mind, begin to assess the physical layout and the farmer's operation of the field, feedlot or pasture that is the subject of your investigation. Some things to assess are as follows (Use the ones that would be applicable to the pollutant that was the subject of the complaint):

- ❖ Is there evidence of erosion?
- ❖ What sources of nutrients are used or produced in the operation?
- ❖ What types of pesticides and petroleum products are used in the operation?
- ❖ If pesticides are used, are they water-soluble, evaporative or do they tend to bind to soil?
- ❖ What are the characteristics of the topography in relation to the water body?
 - Slope
 - Sink holes
 - Soil Types
 - Etc.
- ❖ Is there a buffer or other barrier between the site where the problem is alleged to be occurring and the water body?
- ❖ If there is a buffer, what are the characteristics for the buffer?
 - Mixed vegetation (trees and shrubs, etc.)
 - Grass
 - Etc.
- ❖ What condition is the buffer in?
 - Well vegetated
 - Killed areas
 - Eroded
 - Etc.

- ❖ Does the farmer use nutrient management practices, and if so what are they?
- ❖ Are stream banks eroded, and if so, what was the cause?
 - Natural causes
 - Livestock
 - Etc.
- ❖ Are BMPs used on the land, such as residue management, conservation tillage, sod waterways, animal waste system, hardened access, etc.?
- ❖ Are BMPs well maintained?
 - Is sod waterway or filter strip being filled with sediment?
 - Is animal waste storage facility emptied on schedule?
 - Etc.

This is not an all-inclusive list because there may be other site-specific and complaint-specific circumstances that you'll want to consider, but this gives you an idea of what to assess.

Taking what you've learned about this operation in your assessment, begin to answer the following questions:

- Can the alleged pollution even be a product of this farming operation?
- Is there a route from the field, feedlot or pasture that the pollutants would travel easily (e.g., unobstructed by a physical barrier) to the water body?
- Given the management of the field, feedlot or pasture and other factors, how large is the level of pollution that could be occurring (e.g., large, medium, minimal, none)?
- If there is a pollution occurring, could the pollution in question be occurring from natural causes (e.g., natural stream bank erosion)?
- If there is pollution occurring, was it caused by circumstances beyond the farmer's control?

Using your answers to these questions, you can begin to write up your investigation report and formulate your opinion regarding this case. If you have questions during this process, please contact one of the Agricultural Stewardship Coordinators at (804) 786-3538.

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APPENDIX *E*

Forms for the Agricultural Stewardship Act Program

FORM 1
COMPLAINT TRACKING FORM
AGRICULTURAL STEWARDSHIP ACT

Name of person receiving complaint: _____

1. Was the complaint made anonymously? Yes No
If "Yes," what reason (if any) did complainant give for not wanting to give (his/her) name?

Note: If complainant would not give his/her name, Commissioner must make decision regarding whether or not to investigate.

If "No," complainant's name and mailing address and phone number are:

2. Does this complaint concern an agricultural activity? Yes No

If "Yes," go to question 3. If "No," inform complainant that we have no jurisdiction over non-agricultural activities.

3. What was the agricultural activity? Circle: Beef Dairy Poultry Hogs

Horses Cropland

list additional activities: _____

4. Is the agricultural activity is causing; or, will the agricultural activity cause water pollution?

Yes No Uncertain

If "Yes," go to question 5. If "No," inform complainant that we have jurisdiction only over complaints concerning water pollution.

Form 1 (cont'd)

5. What is the nature of the alleged water pollution?

-
6. What Is the cause of this alleged water pollution? *Circle:* sedimentation
nutrient enrichment toxins
list additional causes: _____
- If additional causes are given then dismiss complaint and inform complainant that we have jurisdiction only over complaints alleging water pollution caused by sedimentation nutrient enrichment and toxins coming from agricultural activities.*
7. Is this specific agricultural activity covered by a government permit (e.g, VPA, VPDES, etc.)?
Yes No Uncertain
- If "No" OR "Uncertain" go to question 8. If "Yes," inform complainant that we have no jurisdiction over complaints concerning water pollution from activities that are covered by a government permit .
8. Name and address of owner or operator whose operation is subject of complaint:

Phone Number(s): _____
9. County Name: _____
10. Directions to complaint site: _____

11. Name of the local soil and water conservation district in which this agricultural activity is located:

[FORM 2]
***[NOTIFICATION TO DISTRICT OF COMPLAINT
AND REQUEST TO INVESTIGATE]***

TO: Directors, *[list district name]* Soil & Water Conservation District

FROM: Commissioner of Agriculture and Consumer Services

THROUGH: *[Coordinator's name]*
Agricultural Stewardship Coordinator

DATE: *[current date]*

RE: Water Pollution Complaint from Agricultural Activity in Your District
(Complaint No. *[number]*)

We have received a complaint alleging that an agricultural activity in your District is causing or will cause water pollution. That agricultural activity is described in greater detail on the attached Complaint Tracking Form. Pursuant to Section 10.1-559.3 of the Code of Virginia, I hereby request that you determine the validity of the information in the complaint.

According to Section 10.1-559.3, you must advise me by the end of the fifth (5th) calendar day following the day on which you receive this request of your decision regarding whether or not you wish to determine the validity of the information in this complaint. (Our standard response form #3 can be used.)

The Agricultural Stewardship Act gives the District] only 21 days to complete investigations to determine the validity of complaints, so if you choose to investigate to determine the validity of the information in the complaint, I will need to receive your decision by the date of *[five days from current date]*. If you choose to investigate, the standard investigation form #9 can be used.

Thank you for your consideration of this request. If you have any questions, please feel free to call me at 804/786-3501 or my staff at 804/786-3538.

[District letterhead]

[FORM 3]
*[DISTRICT'S DECISION REGARDING
REQUEST TO INVESTIGATE VALIDITY OF COMPLAINT]*

TO: Commissioner of Agriculture and Consumer Services

FROM: *[district name]*
Soil & Water Conservation District

DATE: *[current date]*

RE: Water Pollution Complaint from Agricultural Activity in Our District
(Complaint No. *[number]*)

We have received your request regarding a complaint alleging that an agricultural activity in our District is causing or will cause water pollution by sedimentation, nutrient enrichment or toxins. That agricultural activity is described in greater detail on the attached copy of the first page of the corresponding Complaint Tracking Form. Pursuant to Section 10.1-559.3 of the Code of Virginia, I hereby notify you that this Soil & Water Conservation District *[insert the words will investigate, will not investigate or will assistance in a joint investigation with the Virginia Department of Agriculture and Consumer Services]* to determine the validity of the information in that complaint.

Copy: Agricultural Stewardship Coordinator

FORM 4
SITE VISITS AND PHONE CALLS
Follow-up Notes

DATE	TYPE OF ACTIVITY

FORM 5

[Letter to notify the owner or operator about the complaint]

[current date]

[name and address of owner or operator]

Re: Water Pollution Complaint from
Agricultural Activities
(Complaint *[number]*)

Dear *[last name]*:

This letter is to notify you that on *[date]* the Virginia Department of Agriculture and Consumer Services (VDACS) received a complaint alleging that an agricultural activity involving a *[describe activity and location]* is causing water pollution. This complaint falls under the jurisdiction of the Agricultural Stewardship Act (Act) and needs to be investigated within 21 days. During our phone conversation today, you indicated that you would be available to meet with me on *[date and time]*. At that time I will investigate the alleged water pollution concern.

During this investigation, evidence will be collected to determine if your *[activity description]* is allowing *[describe type of pollution]* to enter state waters. If the Commissioner of Agriculture determines that a sufficient amount of evidence is present to cause a threat to human health, animal health, aquatic life, water quality or recreational uses, a plan to correct the water pollution would be required. Then, you would be required to begin implementing this plan within six months. Once the stewardship measures within the plan are completed, the Commissioner of Agriculture will send a letter to document that you have completed your obligations under the Act.

I have enclosed additional information regarding the Agricultural Stewardship Act requirements for your review. If you have any questions, I can be reached at my office by calling *[list phone number]*.

Sincerely,

Agricultural Stewardship Coordinator

Copy: *[local soil and water conservation district]*

[FORM 6]

[Notification to owner or operator of investigation findings]

[current date]

[name and address of owner or operator]

Re: Notification to owner or operator
pursuant to the Agricultural Stewardship
Act regarding the complaint involving
[farming activity] (COMPLAINT
[number])

Dear [last name]:

After I received a complaint alleging that an agricultural activity on your farm is causing or will cause water pollution by [list type(s) of pollution], an investigation was performed on [date] by [list investigator(s) and agency name(s)].

The findings from this investigation are as follows:

- ♦ [describe the location and specific agricultural activity that is or will cause water pollution]

Several factors that contribute to this problem are:

- ♦ [describe factors that contribute to the specific agricultural activity]

In conclusion, this agricultural activity was found to be one that is causing and will cause water pollution and measures must be taken to correct the water pollution problem according to the Agricultural Stewardship Act. **You need to submit an Agriculture Stewardship Plan that addresses the water pollution problem within 60 days of receiving this notice [approximately date] to the Commissioner of Agriculture and Consumer Services and a copy to the [local Soil and Water Conservation District].** A list of possible sources of assistance and the requirements for this plan are attached.

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Plan Requirements

- ◆ Best Management Practices that will correct the water pollution problem
- ◆ An implementation schedule to begin within six months of receiving this notice *[approximate date]*.
- ◆ Complete implementation within twelve months of receiving this notice *[approximate date]*.

Possible assistance in plan development and cost-share

- ◆ [Local Soil and Water Conservation District and phone number]
- ◆ [Local USDA Natural Resources Conservation Services and phone number]
- ◆ [Local County Cooperative Extension and phone number]
- ◆ Virginia Department of Agriculture and Consumer Services
[Agricultural Stewardship Coordinator and phone number]
- ◆ Private consultants in your area

[include information about the appeal process] If you have questions, please contact [name of the Agricultural Stewardship Coordinator and phone number] .

Sincerely,

Commissioner

Copy: *[Local Soil and Water Conservation District]*

FORM 7

[Notification to owner or operator of Agricultural Stewardship Plan status]

[current date]

[name and address of owner or operator]

Re: Notification to owner or operator
pursuant to the Agricultural Stewardship
Act regarding the approval of a
Agricultural Stewardship Plan involving
[farming activity]
(Complaint [number])

Dear [last name]:

This letter is to notify you that I have approved your Agricultural Stewardship Plan [indicate who developed the plan and list any conditions that may go with the approval]. Please be mindful of the implementation schedule to ensure that all dates are met. In your case, the Agriculture Stewardship Act (ASA) requires you to begin correcting the identified water pollution problem before [date].

[Explain any specific conditions about the plan or the use of state or federal assistance]. The best management practices identified in your Agricultural Stewardship Plan to address [specific agricultural activity] are needed to prevent the water pollution identified in my letter dated [Form 6 date]. If you have any questions, please call my office at [phone number].

Thank you for cooperating with the Agricultural Stewardship Program. Through cooperation from producers like you, agriculture can address water pollution problems without the need for more stringent legislation and regulations.

Copy: [Local Soil and Water Conservation District]

[FORM 8]

[Response to complainant regarding status of their complaint]

[current date]

[name and address of complainant]

Re: Status of [name of farmer or operation]
complaint pursuant to the Agricultural
Stewardship Act (Complaint [number])

Dear [last name]:

An investigation was conducted after receiving your complaint alleging that an agricultural activity on [name of farmer or operation] is causing or will cause water pollution by [list the type(s) of pollution], an investigation was performed on [date] by [list investigator(s) and agency name(s)].

[Explain the findings during the investigation and the Commissioner's decision].

[Describe the obligations of the owner or operator as it relates to the Agricultural Stewardship Act].

Thank you for making us aware of this situation and for being patient as we address water pollution problems caused by agricultural activities.

Copy: [Local Soil and Water Conservation District]

Today's date _____

Complaint Number _____

FORM 9
COMPLAINT INVESTIGATION FOR
AGRICULTURAL STEWARDSHIP ACT

Investigator(s) Name/Agency: _____

List of all present during investigation: _____

Date of complaint and description: _____

Did you find that the complained-of agricultural activity is subject to a VPA or VPDES permit?
Yes No

If yes, stop here and return this form to the Commissioner's Office.

Description of the site during the investigation. *(Attach additional sheets if necessary):*

In your opinion, does the evidence support the claim that this agricultural activity is causing or will cause water pollution? Yes No

If no, please list reasons for your conclusion. *(Use additional sheets, if necessary.):* _____

Stop here and return this form to the Commissioner's Office or continue.

If yes, list all evidence that was collected on site and other supporting data (e.g., pictures, water samples, aerial photographs with stream, topographical maps and technical drawings of the problem areas).

[FORM 10]
[Farm or operation name and address]
Agricultural Stewardship Plan
[date]

Objective: *[state the objective of the plan]*

Statement of water pollution problem: [describe each activity or structure that was identified in Form 6 as causing, or that will cause, water pollution. Then describe each solution to correct the water pollution problem.]

Implementation schedule:
As directed by the Virginia Department of Agriculture and Consumer Services, the implementation of these corrective conservation measures will begin prior to *[use date found on Form 6 under plan requirements]*.

[list each solution and indicate implementation dates]

Solution(s)	Implementation Date(s)
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>
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ATTACHMENTS

- *[Use aerial photographs from USDA Farm Service Agency]*
- *[Use a technical drawing to indicated the affected water feature, problem area, and the corrective conservation measures.]*

SIGNATURES:

Owner or Operator _____ Date _____

Soil and Water Conservation
District Representative _____ Date _____

Commissioner of Agricultural
and Consumer Services _____ Date _____

[This planning form is only a guide. Other types of plans are acceptable providing the plan meets Agricultural Stewardship Act requirements.]

INVESTIGATION TRACKING CALENDAR
REGARDING THE AGRICULTURAL STEWARDSHIP ACT
Complaint No. _____

Completion Date	Required Completion Date	STEPS IN ADDRESSING COMPLAINTS
		1. Commissioner's office receives complaint (use Form 1)
		2. Letter from Commissioner's office to inform District of complaint (use Form 2)
		3. District sends response back within five days to Commissioner to inform if they will investigate the complaint (use Form 3)
		4. Phone calls to owner/operator to inform them of the complaint and inform of intent to investigate (use Form 4)
		5. Letter sent to owner/operator to follow-up on phone call as well as provide information on the Act (use Form 5)
		6. Investigate and report to Commissioner within 21 days (use Form 9)
		7. Commissioner's decision to owner/operator (via certified mail) and District within 30 days (use Form 6)
		8. Agricultural Stewardship Plan to Commissioner's Office within 60 days (can use Form 10)
		9. Agricultural Stewardship Plan reviewed by SWCD
		10. Agricultural Stewardship approval letter to owner/operator within 30 days (use Form 7)
		11. Letter to Complainant informing them of complaint status (use Form 8)
		12. Implementation of plan (begin within six months) <input type="checkbox"/> yes <input type="checkbox"/> no Site visit after six months to insure compliance If not implementing, Commissioner sends a corrective action by certified mail.
		13. Implementation completion not to exceed 18 months. Hardship cases can be extended by Commissioner for 180 days only if request is received 60 days before the final implementation or after a natural disaster occurs. Request received: _____ Granted date: _____ New Implementation Completion Date: _____
		14. Plan implementation complete
		15. Site inspection review